

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1927

No. 75

**NORTHWESTERN MUTUAL LIFE INSURANCE
COMPANY, PLAINTIFF IN ERROR,**

vs.

THE STATE OF WISCONSIN

**ON WRIT TO THE SUPREME COURT OF THE STATE OF
WISCONSIN**

WRIT GRANT 2, 1928

(21,500)

the same day, in some cases, but

the same

the same day, in some cases, but

the same day, in some cases, but

the same day, in some cases, but

(31,988)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 421

NORTHWESTERN MUTUAL LIFE INSURANCE
COMPANY, PLAINTIFF IN ERROR,

VS.

THE STATE OF WISCONSIN

IN ERROR TO THE SUPREME COURT OF THE STATE OF
WISCONSIN

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[fol. 1]

IN SUPREME COURT OF WISCONSIN

Calendar No. 173

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY,
Plaintiff,

VS.

THE STATE OF WISCONSIN, Defendant

PETITION FOR WRIT OF ERROR—Filed April 23, 1926

Considering itself aggrieved by the final decision of the Supreme Court in rendering judgment against it in the above entitled case, the plaintiff hereby prays a writ of error from the said decision and judgment to the United States Supreme Court, and an order fixing the amount of a supersedeas bond.

Assignment of errors herewith.

Geo. Lines, Sam T. Swanson, Attorneys for Plaintiff.

IN SUPREME COURT OF WISCONSIN

ORDER ALLOWING WRIT OF ERROR—Filed April 23, 1926

STATE OF WISCONSIN,

Supreme Court, ss.

Let the writ of error issue upon the execution of a bond by The Northwestern Mutual Life Insurance Company to The State of Wisconsin in the sum of Five hundred (500) Dollars, such bond when approved to act as a supersedeas.

Dated April 23, 1926.

A. J. Vinje, Chief Justice Supreme Court of Wisconsin. (Seal: Supreme Court of Wisconsin.)

[fol. 2] [File endorsement omitted.]

2. The said Supreme Court of Wisconsin erred in holding and deciding that Section 76.34, Wisconsin Statutes for 1921, (numbered Section 1211.35 in Wisconsin Statutes for 1919 and Section 51.32 in Wisconsin Statutes for 1917), which imposed upon plaintiff, a Wisconsin life insurance company, a tax of three per cent. of its gross income from all sources (except from premiums and real estate upon which plaintiff had paid a real estate tax), in so far as such gross income was received from bonds and securities issued by the United States, did not constitute or create a burden upon and interference with the power of Congress to borrow money upon the credit of the United States, and that said Section 76.34, as respects gross income received from interest on such bonds and securities issued by the United States, did not contravene the provisions of Article I, Section 8, of the Constitution of the United States.

3. The said Supreme Court of Wisconsin erred in holding and deciding that the three per cent. tax levied and imposed by the State of Wisconsin upon the gross interest received by plaintiff, The Northwestern Mutual Life Insurance Company, on bonds and securities issued by the United States, amounting during the calendar years 1918 to 1922, inclusive, to the aggregate sum of \$6,948,960.38, (received \$177,720.52 in 1918; \$919,334.11 in 1919; \$2,094,420.18 in 1920; \$2,194,394.62 in 1921, and \$1,743,180.95 in 1922), resulting in an aggregate tax of \$208,468.80, was not a burden upon and interference with the power of Congress to borrow money upon the credit of the United States, and did not contravene the provisions of Article I, Section 8, of the Constitution of the United States.

4. The said Supreme Court of Wisconsin erred in holding and deciding that the three per cent. tax levied and imposed by the State of Wisconsin upon the gross interest received by plaintiff, The Northwestern Mutual Life Insurance Company, on bonds and securities issued by the United States, amounting during the calendar years 1918 to 1922, inclusive, to the aggregate sum of \$6,948,960.38, (received \$177,720.52 in 1918; \$919,334.11 in 1919; \$2,094,420.18 in 1920; \$2,194,394.62 in 1921; and \$1,743,180.95 in 1922), resulting in an aggregate tax of \$208,468.80, was not a tax upon said bonds and securities or the interest thereon and was not a burden

upon and interference with the power of Congress to borrow money upon the credit of the United States and did not contravene the provisions of Section 3701, United States Revised Statutes.

5. The said Supreme Court of Wisconsin erred in holding and deciding that Section 76.34, Wisconsin Statutes for 1921, (numbered Section 1211.35 in Wisconsin Statutes for 1919 and Section 51.32 in Wisconsin Statutes for 1917), which imposed upon plaintiff, a Wisconsin life insurance company, a tax of three per cent of its gross income from all sources (except from premiums and real estate upon which plaintiff had paid a real estate tax), in so far as \$5,033.33 of such gross income was received during the calendar years 1920 and 1921 from bonds issued by the United States, commonly known as "U. S. 4s of 1925," resulting in a tax thereon of \$177.99, was not a tax upon said bonds or the interest thereon and was not a burden upon and interference with the power of Congress to borrow money upon the credit of the United States, and did not contravene the provisions of the Act of Congress approved January 14, 1875, entitled "An Act to Provide for the Resumption of Specie Payments," (18 U. S. Stats. at Large, p. 296), and the Act of Congress approved July 14, 1870, [vol. 9] entitled "An Act to Authorize the Refunding of the National Debt," (16 U. S. Stats. at Large, p. 272).

6. Said Supreme Court of Wisconsin erred in holding and deciding that Section 76.34, Wisconsin Statutes for 1921, (numbered Section 1211.35 in Wisconsin Statutes for 1919 and Section 51.32 in Wisconsin Statutes for 1917), which imposed upon plaintiff, a Wisconsin life insurance company, a tax of three per cent of its gross income from all sources (except from premiums and real estate upon which plaintiff had paid a real estate tax), in so far as \$112,583.33 of such gross income was received during the calendar years 1918 to 1922, inclusive, from bonds issued by the United States, commonly known as "First Liberty Loan Bonds," resulting in a tax thereon of \$3,377.49, was not a tax upon said bonds or the interest thereon and was not a burden upon and interference with the power of Congress to borrow money upon the credit of the United States and did not contravene the provisions of the Act of Con-

gross approved April 24, 1917, known as the "First Liberty Bond Act," (U. S. Stats. 1917, p. 35).

7. Said Supreme Court of Wisconsin erred in holding and deciding that Section 76.34, Wisconsin Statutes for 1921, (numbered Section 1211.35 in Wisconsin Statutes for 1919 and Section 51.32 in Wisconsin Statutes for 1917), which imposed upon plaintiff, a Wisconsin life insurance company, a tax of three per cent of its gross income from all sources (except from premiums and real estate upon which plaintiff had paid a real estate tax), in so far as \$49,647.81 of such gross income was received during the calendar year 1918 from bonds issued by the United States, commonly known as "Second Liberty Loan Bonds," resulting in a tax thereon of \$1,489.41, was not a tax upon said bonds or the interest thereon and was not a burden upon and interference with the power of Congress to borrow money upon the credit of the United States and did not contravene the provisions of the Act of Congress approved September 24, 1917, known as the "Second Liberty Bond Act," (U. S. Stats. 1917, p. 288).

8. Said Supreme Court of Wisconsin erred in holding and deciding that Section 76.34, Wisconsin Statutes for 1921, (numbered Section 1211.35 in Wisconsin Statutes for 1919 and Section 51.32 in Wisconsin Statutes for 1917), which imposed upon plaintiff, a Wisconsin life insurance [fol. 10] company, a tax of three per cent of its gross income from all sources (except from premiums and real estate upon which plaintiff had paid a real estate tax), in so far as \$684,857.60 of such gross income was received during the calendar years 1918 to 1922, inclusive, from bonds issued by the United States, commonly known as "Second Liberty Loan Bonds Converted," resulting in a tax thereon of \$20,545.70, was not a tax upon said bonds or the interest thereon and was not a burden upon and interference with the power of Congress to borrow money upon the credit of the United States and did not contravene the provisions of the Act of Congress approved September 24, 1917, known as the "Second Liberty Bond Act," (U. S. Stats. 1917, p. 288), as amended by the Act of Congress approved April 4, 1918, known as the "Third Liberty Bond Act," (U. S. Stats. 1917 & 1918, Part 1, p. 562).

9. Said Supreme Court of Wisconsin erred in holding and deciding that Section 76.34, Wisconsin Statutes for 1921, (numbered Section 1211.35 in Wisconsin Statutes for 1919 and Section 51.32 in Wisconsin Statutes for 1917), which imposed upon plaintiff, a Wisconsin life insurance company, a tax of three per cent of its gross income from all sources (except from premiums and real estate upon which plaintiff had paid a real estate tax), in so far as \$2,629,609.15 of such gross income was received during the calendar years 1918 to 1922, inclusive, from bonds issued by the United States, commonly known as "Third Liberty Loan Bonds," resulting in a tax thereon of \$78,888.25, was not a tax upon said bonds or the interest thereon and was not a burden upon and interference with the power of Congress to borrow money upon the credit of the United States and did not contravene the provisions of the Act of Congress approved April 4, 1918, known as the "Third Liberty Bond Act," (U. S. Stats. 1917 & 1918, Part 1, p. 502).

10. Said Supreme Court of Wisconsin erred in holding and deciding that Section 76.34, Wisconsin Statutes for 1921, (numbered Section 1211.35 in Wisconsin Statutes for 1919 and Section 51.32 in Wisconsin Statutes for 1917), which imposed upon plaintiff, a Wisconsin life insurance company, a tax of three per cent of its gross income from all sources (except from premiums and real estate upon which plaintiff had paid a real estate tax), in so far as \$1,811,947.78 of such gross income was received during the calendar [fol 11] years 1919 to 1922, inclusive, from bonds issued by the United States, commonly known as "Fourth Liberty Loan Bonds," resulting in a tax thereon of \$54,358.41, was not a tax upon said bonds or the interest thereon and was not a burden upon and interference with the power of Congress to borrow money upon the credit of the United States and did not contravene the provisions of the Act of Congress approved July 9, 1918, known as the "Fourth Liberty Bond Act," (U. S. Stats. 1917 & 1918, Part 1, p. 844).

11. Said Supreme Court of Wisconsin erred in holding and deciding that Section 76.34, Wisconsin Statutes for 1921, (numbered Section 1211.35 in Wisconsin Statutes for 1919 and Section 51.32 in Wisconsin Statutes for 1917), which imposed upon plaintiff, a Wisconsin life insurance

company, a tax of three per cent of its gross income from all sources (except from premiums and real estate upon which plaintiff had paid a real estate tax), in so far as \$1,128,154.40 of such gross income was received during the calendar years 1919 to 1922, inclusive, from bonds and treasury notes issued by the United States, commonly known as "Victory Loan Bonds" and "U. S. A. Treasury Notes," resulting in a tax thereon of \$33,844.75, was not a tax upon said bonds and notes or the interest thereon and was not a burden upon and interference with the power of Congress to borrow money upon the credit of the United States and did not contravene the provisions of the Act of Congress approved March 3, 1919, known as the "Victory Liberty Loan Act," (U. S. Stats. 1919, Part 1, p. 1366).

12. Said Supreme Court of Wisconsin erred in holding and deciding that Section 7634, Wisconsin Statutes for 1921, (numbered Section 1211.35 in Wisconsin Statutes for 1919 and Section 5132 in Wisconsin Statutes for 1917), which imposed upon plaintiff, a Wisconsin life insurance company, a tax of three per cent of its gross income from all sources (except from premiums and real estate upon which plaintiff had paid a real estate tax), in so far as \$526,226.26 of such gross income was received during the calendar years 1919 to 1922, inclusive, from Treasury certificates of indebtedness issued by the United States, commonly known as "U. S. A. Treasury Certificates of Indebtedness," resulting in a tax thereon of \$15,786.80, was not a tax upon said certificates of indebtedness or the interest thereon and was not a burden upon and interference with the power of [fol. 12] Congress to borrow money upon the credit of the United States and did not contravene the provisions of the Act of Congress approved September 24, 1917, known as the "Second Liberty Bond Act," (U. S. Stats. 1917, p. 288), as amended by the Act of Congress approved April 4, 1918, known as the "Third Liberty Bond Act," (U. S. Stats. 1917 & 1918, Part 1, p. 302), and by the Act of Congress approved March 3, 1919, known as the "Victory Liberty Loan Act," (U. S. Stats. 1919, Part 1, p. 1366).

13. Said Supreme Court of Wisconsin erred in holding and deciding that Section 7634, Wisconsin Statutes for 1921, (numbered Section 1211.35 in Wisconsin Statutes for

1919 and Section 51.32 in Wisconsin Statutes for 1917), which imposed upon plaintiff, a Wisconsin life insurance company, a tax of three per cent of its gross income from all sources (except from premiums and real estate upon which plaintiff had paid a real estate tax), in so far as such gross income was received from bonds and securities issued by the United States, did not deprive the plaintiff of its property without due process of law and did not deny to the plaintiff the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States.

For which errors, the plaintiff, The Northwestern Mutual Life Insurance Company prays that the judgment of the Supreme Court of the State of Wisconsin dated the 9th day of February, 1926, be reversed and a judgment rendered in favor of the plaintiff, The Northwestern Mutual Life Insurance Company, and for costs.

Dated April 23, 1926.

Geo. Liles, Sam T. Swanson, Attorneys for the
Northwestern Mutual Life Insurance Company.

[fol. 13] [File endorsement omitted.]

[fols. 14 & 15] Certificate of lodgment, filed April 26, 1926, omitted in printing.

[fols. 16 & 17] Bond on writ of error for \$5000.00, approved and filed April 23, 1926, omitted in printing.

[fol. 18] IN SUPREME COURT OF WISCONSIN

[Title omitted]

PLAINT FOR TRANSCRIPT OF RECORD—Filed April 23, 1926
To Arthur A. McLeod, Clerk of the Supreme Court of Wisconsin:

The portions of the record in the above entitled case to be incorporated into the transcript of the record to be sent

to the Clerk of the United States Supreme Court by virtue of a writ of error heretofore issued are indicated as follows:

1. Petition for writ and order allowing the same;
2. Assignment of errors and prayer for reversal;
3. Writ or error;
4. Citation and proof of service;
5. Bond on writ of error;
6. Clerk's certificate as to lodgment;
7. Precept for record;
8. Summons and proof of service;
9. Complaint;
10. Demurrer;
11. Order of the Circuit Court sustaining demurrer;
12. Judgment Circuit Court dismissing complaint with costs;
13. Opinion Supreme Court of Wisconsin;
14. Final judgment Supreme Court of Wisconsin.

Dated April 23rd, 1926.

Geo. Lines, Sam T. Swanson, Attorneys for Plaintiff

[fol. 19] [File endorsement omitted.]

[fols. 20-24] [Caption omitted]

[fol. 25] IN CIRCUIT COURT OF DANE COUNTY

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY,
Plaintiff,

vs.

THE STATE OF WISCONSIN, Defendant

Summons—Filed in Circuit Court January 12, 1924; in
Supreme Court July 16, 1925

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above entitled action in the court aforesaid; and in case of your failure so to do judgment will be

rendered against you according to the demand of the complaint.

Geo. Lines, Sam T. Swansen, Plaintiff's Attorneys.

Post Office address: 210 Wisconsin Street, Milwaukee, Milwaukee County, Wisconsin.

[fol. 26] [File endorsement omitted.]

[fol. 27] [File endorsements omitted]

IN CIRCUIT COURT OF DANE COUNTY

[Title omitted]

~~BUTLER COMPANY~~—Filed in Circuit Court February 19, 1924; in Supreme Court July 10, 1925

The above named plaintiff, by George Lines and Sam T. Swansen, its attorneys, for complaint in the above entitled action, alleges:

1. Plaintiff (sometimes hereinafter also referred to as Company or the Company) is a corporation, without capital stock, organized and existing under and by virtue of Chapter 129 of the Private and Local Laws of Wisconsin for the year 1857, and acts amendatory thereof and supplemental thereto, and has power to insure upon the level premium mutual plan the lives of its respective members and to make all and every insurance appertaining to or connected with life risks. Since 1859 plaintiff has been and now is extensively engaged in said business, and for many years past has been and now is so engaged in forty-two states, including Wisconsin, and in the District of Columbia, and has issued and for many years past has had and now has outstanding many thousands of policies insuring the lives of many thousands of persons. All persons insured under plaintiff's policies are members of plaintiff while their respective policies remain in force, and all persons now insured are members. All members were and are during membership entitled to insurance at cost and to

participate ratably and equitably in any funds of plaintiff in excess of the cost of insurance.

2. Plaintiff is a purely mutual company and has always conducted its business of life insurance on what is generally known as the "level premium plan," as distinguished from the "pure assessment plan," under which the loss payable on the death of a member is, after the event, contributed pro rata by the surviving members, and from the "natural [fol. 28] premium plan," under which each member contributes each year the cost of carrying his insurance for that year, which cost increases yearly as his age advances. Under the level premium plan the estimated annual cost of each member's insurance is averaged and the maximum annual contribution which he can be called upon to make is uniform throughout the life of the policy. The member contributes annually during his early years a sum in excess of the natural premium. Such excess contributions augmented by interest thereon are held by plaintiff as a reserve which serves to maintain the insurance in later years when the stipulated level premium would otherwise be insufficient to meet the current cost of insurance.

3. In order to meet and perform its obligations under its policy contracts, it has been necessary and plaintiff has from time to time set aside and accumulated large reserves, the minimum of which has for many years been fixed and determined by the laws of Wisconsin and other states where the Company transacts business. The laws of the State of Wisconsin and of all other states in which plaintiff does business requires as a condition precedent to the continued transaction of business therein that plaintiff's assets shall not be less than the reserves required by law. In plaintiff's management of assets there is no segregation or special allocation of any part thereof. The reserve is not ear-marked or separately invested. The amount of reserve liability for which plaintiff is required to hold assets is computed annually by the Commissioner of Insurance of the State of Wisconsin, and his certificate is accepted by the Insurance Commissioners of all other states in which plaintiff does business, except that prior to 1922 the Insurance Commissioner of Massachusetts made an independent

calculation. The only sources of revenue which plaintiff has ever had, or now has, have been and are premiums paid by member policyholders and interest or other income derived from investments. Prior to the payment under protest of the sum hereinafter stated, plaintiff had paid to the State of Wisconsin all taxes and license fees levied or charged by the laws of said State, according to its understanding of such laws, upon income received since its organization, including the taxes and license fees levied or charged under said laws upon its income received during [fol. 29] the years 1918, 1919, 1920, 1921 and 1922.

4. In order to maintain and improve its reserve fund; to meet its policy obligations as they mature, and to furnish insurance to members at cost, plaintiff since its organization has been and now is authorized to keep and has kept its reserve funds and other assets invested in income producing securities. Its assets are invested in an office building and other real estate acquired through foreclosure in United States, State, municipal, railroad and utility bonds, bonds secured by mortgages on real estate, and loans to policyholders.

Ever since organization, and while plaintiff has transacted business, the statutes of Wisconsin have defined the securities or assets in which plaintiff could invest its funds, limiting investments to safe and sound securities yielding income moderate in amount. These statutes, modified somewhat from time to time so as to enlarge the field, have remained without material change since 1917—the period covered in this complaint—and limit plaintiff's investments to:

(a) Lawfully authorized bonds or other evidences of indebtedness of the United States, or of any State or of the District of Columbia, or of the Dominion of Canada or of any province or city thereof.

(b) Lawfully authorized bonds of any county, city, town, village, or school district, or of any other governmental or civil division having a population of 50,000 or more, within the United States, or the District of Columbia, which are direct obligations of the municipality or district or division issuing the same.

(c) Loans secured by mortgages upon real estate in the United States or the District of Columbia, not exceeding 50% of the fair market value of the property mortgaged.

(d) Bonds of terminal, belt line, and railroad companies in the United States or Canada, adequately secured by mortgage or pledge of property of the corporation issuing them, upon which no default in payment of interest has occurred within three years of the date of investment or issuance of the bonds.

[fol. 30] (e) Bonds of street or interurban railway corporations, of heat, light and power companies operating in cities in the United States with a population of not less than 25,000 inhabitants, which bonds are adequately secured by mortgage upon the franchises and property of such corporation, and upon which bonds interest has been paid for not less than three years prior to investment.

(f) Mortgage bonds of the farm loan banks authorized under the Federal Farm Loan Act, and in obligations secured by mortgages or trust deeds authorized in subdivision (c) above.

(g) Loans upon collateral security of any of the foregoing, not exceeding 90% of the market value of such securities.

(h) Loans upon the security of its own policies to an amount not exceeding the surrender value.

(i) Evidences of indebtedness other than those specified above if the same are eligible for discount, rediscount, purchase or sale by Federal Reserve Banks, but such investments not to exceed at any time one-third of its unappropriated surplus or contingency reserve as defined in Section 1652a of the Wisconsin Statutes. (Sec. 1951, Wis. Stats. for 1917 and 1921.)

5. Plaintiff has for many years, as authorized by the laws of the State of Wisconsin, invested in bonds and securities issued by the United States. During the calendar years 1918 to 1922 inclusive, plaintiff owned large amounts of bonds and securities issued by the United States, and received considerable sums of money as interest thereon, as appears by the statement below showing the amount of interest received during each of said calendar years and from what United States securities, as follows:

	1918	1919	1920	1921	1922
U. S. A. 4s of 1925					
1st Liberty Loan 31 ⁴ s	826,250 00	826,250 00	84,000 00	81,000 00	
2nd " 4 ⁴ s	49,647 83		26,250 00	26,250 00	87,500 00
2nd " 4 ¹ 4s (Contd.)					
Verbal	61,973 27	128,775 00	131,548 96	171,275 00	191,285 37
[Vol. 31]					
3rd Liberty Loan 4 ¹ 4s	39,849 42	129,859 93	740,701 20	871,250 00	847,898 60
4th " 4 ¹ 4s		385,008 40	428,129 29	499,375 00	499,375 00
Victory Liberty Loan 4 ¹ 4s		148,659 81	447,647 91	447,891 96	17,945 91
U. S. A. Treas. 6 ¹ 2s of Indebtedness		100,720 88	226,092 82	86,329 93	113,023 93
U. S. A. Treasury Notes					66,123 95
Paid for Accrued Int					175 14
	8177,720 52	8919,334 11	82,004,420 18	82,104,304 62	81,743,180 95

Since February 1862 the statutes of the United States have provided: "All stocks, bonds, treasury notes and other obligations of the United States shall be exempt from taxation by or under state or municipal or local authority." (U. S. R. S., Sec. 3701.)

Of the bonds and securities above enumerated, the "U. S. A. 4s of 1925" were issued under the authority of the Act of Congress approved January 14, 1875 (18 U. S. Stats. at Large, p. 296), and the Act approved July 14, 1879 (16 U. S. Stats. at Large, p. 272), which Acts provide that "all of * * * said * * * bonds and the interest thereon shall be exempt from the payment of all taxes or duties of the United States as well as from taxation in any form by or under State, municipal or local authority; and the said bonds shall have set forth and expressed upon their face the above specified conditions."

The above Liberty and Victory Loan Bonds, the United States Treasury Certificates and Treasury Notes were issued under authority of the Act of Congress approved April 24, 1917 (U. S. Stats. 1917, p. 35), which provides that: "The principal and interest thereof shall be payable in United States gold coin of the present standard of value; and shall be exempt both as to principal and interest from all taxation except estate or inheritance taxes imposed by authority of the United States or its possessions, or by any State or local taxing authority;" and by authority of the Act of Congress approved September 24, 1917 (U. S. Stats. 1917, p. 288), as amended by the Acts of April 4, 1918 (U. S. Stats. 1917 & 1918, Part I, p. 592), July 9, 1918 (U. S. Stats. 1917 & 1918, Part I, p. 844), September 24, 1918 (U. S. Stats. 1917 & 1918, Part I, 965), and March 3, 1919 [fol. 32] (U. S. Stats. 1919, Part I, p. 1369), which Acts provide that:

"All such bonds and certificates shall be exempt, both as to principal and interest, from all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except (a) estate or inheritance taxes, and (b) graduated additional income taxes, commonly known as surtaxes, and excess profits and war profits taxes, now or hereafter imposed by the United States, upon the in-

come or profits of individuals, partnerships, associations, or corporations."

6. During the years 1918 to 1922 inclusive, and for many years prior thereto, the statutes of Wisconsin regulating the business of life insurance within the State and imposing license fees or taxes thereon, have provided as follows:

Section 7034. "Every company * * * transacting the business of life insurance within this state * * * shall, on or before the first day of March, in each year, pay into the state treasury as an annual license fee for transacting such business the amounts following:

(1) If such company * * * is organized under the laws of this state, three per centum of its gross income from all sources for the year ending December thirty first, next prior to said first day of March excepting therefrom income from rents of real estate upon which said company * * * has paid the taxes assessed thereon, and excepting also premiums collected on policies of insurance and contracts for annuities."

(2) Foreign companies.

(3) "Such license, when granted shall authorize the company * * * to whom it is issued to transact business until the first day of March of the ensuing year, unless sooner revoked or forfeited. The payment of such license fee shall be in lieu of all taxes for any purpose authorized by the laws of this state, except taxes on such real estate as may be owned by such company * * *"

Section 7041. "The property in this section described is exempt from taxation, to wit:

* * * * *

(14) All the personal property of all insurance companies that now are or shall be organized or doing business in this state."

Section 1947 5. "No life insurance corporation whatever shall do any business in this state, nor shall any person act as agent or otherwise within this state in receiving or proc[re]ding applications for life insurance or in any manner aid in transacting such business for any such cor-

poration until it shall have first procured a license from said commissioner authorizing it to issue policies of insurance in this state and have paid therefor the license fee required to be paid by section 76.34. * * *."

Section 1948. "No company shall transact business in this state until it shall have obtained a license therefor from the commissioner of insurance. No such license shall be issued until the company has complied with all the requirements of the laws of this state, nor until after such examination as he may require, the commissioner is satisfied that its assets are properly and safely secured and exceed its liabilities, valuing its policies as provided by the laws of this state."

7. Pursuant to said Section 76.34 and the regulations prescribed by the Commissioner of Insurance of the State of Wisconsin, plaintiff on or before the first day of March in each of the years 1919 to 1923 inclusive, presented to and filed with said Commissioner a statement in the form prescribed by him, showing the amount of plaintiff's gross income for each of the calendar years ending December 31, 1918 to 1922 inclusive, upon which the license fee or tax of 3%, prescribed by said Section 76.34 of the Wisconsin Statutes, should be computed, as understood and claimed by plaintiff. Copies of said statements are hereto attached, marked respectively Exhibits A, B, C, D and E, and made a part of this complaint. In said statements, as appears therefrom, plaintiff excluded from taxable income the interest from United States tax exempt bonds, but showed the amount of such interest received each year, which statements so made as aforesaid were accepted by the Commissioner of Insurance and by the State Treasurer. At the time of filing said several returns plaintiff also paid to the State Treasurer of said State a tax or license fee of 3% of the amount of gross income admitted by it in said several returns to be taxable. For the calendar years 1918 and 1919 plaintiff also paid under protest 3% on the amount of interest on policy loans not paid by the policyholders, but added to the principal of such loans or advances. Upon [fol. 34] the filing of each of said returns and the payment of the tax or license fee as shown thereon, said Commissioner of Insurance duly issued to plaintiff a license to transact business for the ensuing year. The last of said

licenses was issued on March 1, 1923, and authorized plaintiff to transact business until the first day of March 1924 unless sooner revoked or forfeited.

8. On or about the 24th day of October, 1923, said Commissioner of Insurance demanded of plaintiff in writing that it forthwith pay as an additional tax or license fee for each of the years here involved 3% of the interest received by plaintiff during each of the calendar years 1918 to 1922 inclusive, from the United States tax-free bonds and other evidences of indebtedness, together with interest on said several amounts at 6% from the date when such payments, according to such demand, should have been made. A copy of said demand, marked Exhibit F, is hereto attached and made a part of this complaint.

Thereafter and on or about the 3rd day of January, 1924, said Commissioner of Insurance again demanded payment of said license fee or tax, and threatened that unless said tax was forthwith paid said Commissioner would immediately cancel and revoke the license of plaintiff to transact business in the State of Wisconsin. A copy of said demand, marked Exhibit G, is hereto attached and made a part of this complaint.

9. By reason of the insistence of said Commissioner of Insurance that plaintiff was by said Section 76.34, Wisconsin Statutes, required to pay as part of its tax or license fee for each of the years beginning March 1, 1919, to March 1, 1923, inclusive, 3% upon the sums received as interest on the tax-exempt United States securities as hereinbefore stated, together with interest on said amounts from March first each year, amounting in all to the sum of \$236,515.14, and by reason of the threat of said Commissioner in said letter, Exhibit G, that if plaintiff failed to pay said sum, he, said Commissioner, would cancel and revoke plaintiff's present license to transact business in the State of Wisconsin, and refuse to permit plaintiff to transact business in said State, plaintiff did on the 10th day of January, 1924, not voluntarily, but under duress, pay to the State Treasurer of Wisconsin under protest the said sum of \$236,515.14, of which protest a copy is hereto attached, marked [fol. 35] Exhibit H, and made a part of this complaint. Said sum was, after said payment, immediately deposited

in the treasury of the State of Wisconsin, and said State Treasurer issued and delivered to plaintiff his receipt as such State Treasurer for said sum of \$236,515.14, of which receipt a copy, marked Exhibit L, is hereto attached and made a part of this complaint.

10. By reason of the improper and incorrect inclusion of interest received on United States securities, exempt from taxation as aforesaid, in the gross income of plaintiff for each of the calendar years 1918 to 1922 inclusive, an additional tax or fee of 3% of the gross amount of interest so received was assessed and imposed on plaintiff for each of the license years 1919 to 1923 inclusive, amounting in the aggregate to \$208,468.80, and plaintiff claims and alleges that said sum and the whole thereof, together with \$28,046.34 of interest on the said several tax items, also exacted from plaintiff as aforesaid, should be refunded and repaid and illegally collected.

11. The act of the Commissioner of Insurance of the State of Wisconsin in compelling plaintiff under and by virtue of said Section 26.34, Wisconsin Statutes, to pay a tax or license fee for the years 1919 to 1923 inclusive, of 3% of gross income from the United States tax exempt securities aforesaid, was unlawful, null and void to plaintiff's great damage and injury, and was a direct tax and burden upon and interference with the right and power of Congress to borrow money on the credit of the United States, as authorized by Article I, Section 8, (2) and (18), U. S. Constitution, and violated the laws of the United States enumerated below, whereby all the bonds and securities above described were and are exempt from the tax so imposed and collected—that is to say:

Sec. 3704, U. S. R. S., the Act of Congress approved January 14, 1875, entitled "An Act to Provide for the Redemption of Specie Payments" (18 U. S. Stats. at Large, p. 296);

The Act of Congress approved July 14, 1876, entitled [fol. 36] "An Act to Authorize the Refunding of the National Debt" (16 U. S. Stats. at Large, p. 272);

The Act of Congress approved April 24, 1917, known as the "First Liberty Bond Act" (U. S. Stats. 1917, p. 223);

The Act of Congress approved September 24, 1917, known as the "Second Liberty Bond Act" (U. S. Stats. 1917, p. 2881);

The Act of Congress approved April 4, 1918, known as the "Third Liberty Bond Act" (U. S. Stats. 1917 & 1918, Part 1, p. 592);

The Act of Congress approved July 9, 1918, known as the "Fourth Liberty Bond Act" (U. S. Stats. 1917 & 1918, Part 1, p. 844);

The Act of Congress approved September 24, 1918, entitled "An Act to Supplement the Second Liberty Bond Act, as amended, and for other Purposes" (U. S. Stats. 1917 & 1918, p. 965); and

The Act of Congress approved March 3, 1919, known as the "Victory Liberty Loan Act" (U. S. Stats. 1919, Part 1, p. 1369).

12. The act of said Commissioner of Insurance of the State of Wisconsin in compelling plaintiff under and by virtue of said Section 7634, Wisconsin Statutes, to pay a tax or license fee for the years 1919 to 1923 inclusive, of 3% of gross income from the United States tax exempt securities aforesaid, was unlawful, null and void to plaintiff's great damage and injury, and deprived plaintiff of its property without due process of law, and denied to plaintiff the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States.

Wherefore plaintiff prays judgment against the defendant for the sum of \$236,515.14, with interest thereon from the 10th day of January, 1924, together with its costs and disbursements of this action.

George Lanes, Sam T. Swausen, Attorneys for Plaintiff.

[fol. 37]. *Duly sworn to by W. D. Van Dake. Jurat omitted in printing.*

[fol. 38] EXHIBIT A TO BILL OF COMPLAINT

(Copy)

The Northwestern Mutual Life Insurance Company, Milwaukee, Wisconsin

Statement showing gross income from all sources for the year ending December 31, 1918, upon which is computed the three per centum tax as an annual license fee for the privilege of transacting business in the State of Wisconsin for the year ending March 1, 1920, required under chapter 434, Laws of Wisconsin, 1915, Sec. 51.32.

Gross Income

Interest on mortgage loans	\$19,643,294.44
Interest on bonds and dividends on stocks	*4,698,263.44
Interest on premium notes and interest actually paid on policy loans or liens	12,573,415.86
Interest on deposit in banks	113,419.53
Interest collected on restoration of lapsed policies	5,355.38
Interest on agents' indebtedness	476.55

Total Income	\$18,934,265.20
Three per centum thereon	541,927.96

*There is not included interest received on United States Liberty Loan Bonds (exempt from taxation), amounting to \$177,720.52, to wit:

First Liberty Loan 3½'s	\$29,250.00
Second Liberty Loan 4's	49,647.83
Second Liberty Loan 4½'s (Converted)	61,973.27
Third Liberty Loan 4½'s (Less accrued int \$5,443.18)	39,849.42
	\$177,720.52

*There is not included herein the sum of \$787,455.74, which is the net amount of interest on policy loans added to principal during year ending December 31, 1918, on account of the non-payment of such interest when due, the

amount so added being \$992,779.79, less such payments as were made in cash during the same period amounting to \$205,324.05.

Milwaukee, Wisconsin, February 28, 1919.

(Vol. 39) EXHIBIT B TO BILL OF COMPLAINT

(Copy)

The Northwestern Mutual Life Insurance Company, Milwaukee, Wisconsin

Statement showing gross incomes from all sources for the year ending December 31, 1919, upon which is computed the three per centum tax as an annual license fee for the privilege of transacting business in the State of Wisconsin for the year ending March 1, 1921, required under chapter 434, Laws of Wisconsin, 1915, Sec. 51.32.

Gross Income

Interest on mortgage loans	\$10,842,288.01
Interest on bonds	54,809,644.32
Interest on premium notes and interest actually paid on policy loans and liens	42,718,394.12
Interest on deposits in banks	138,583.48
Interest collected on restoration of lapsed policies	6,501.63
Total Income	\$18,515,322.16
Three per centum thereon	555,459.66

Interest received on United States of America Liberty Loan Bonds, exempt from taxation in accordance with the provisions of the acts authorizing the issue thereof, not included:

First Liberty Loan 3½'s	\$26,250.00
Second Liberty Loan 4½'s (Converted)	128,775.00
Third Liberty Loan 4½'s	129,859.93
Fourth Liberty Loan 4½'s	385,068.49
Victory Liberty Loan 4½'s	148,659.81
U. S. A. Treasury Certificates on Indebtedness	100,720.88
	<u>\$919,334.11</u>

(There is not included herein the sum of \$721,435.77, which is the net amount of interest on policy loans added to the principal of loans during the year ending December 31, 1919, because of the non payment of such interest when due, the amount so added being \$1,009,405.86, less such repayments as were made in cash during the same period amounting to \$287,970.09; plus \$215.25 of interest received on Soldiers' and Sailors' Civil Relief Act Insurance Bonds exempt from taxation.

Milwaukee, Wisconsin, February 28, 1920.

[fol. 40]

(Copy)

Supplemental Statement Showing Gross Income from All
Sources for the Year Ending Dec. 31, 1919

Gross Profit on sale of bonds (Income item 42 (b) Annual Statement)	89 64
Gross increase, by adjustment, in book value of bonds (Income item 43 (b) Annual Statement)	\$125,749 84
Less Gross decrease, by adjust- ment, in book value of bonds (Disbursement item 48 (b) An- nual Statement)	84,828 92
	40,920 56
	\$40,920 56
Three per centum thereon	\$1,227 92

[fol. 41] EXHIBIT C TO BILL OF COMPLAINT

(Copy)

The Northwestern Mutual Life Insurance Company,
Milwaukee, Wisconsin

Statement showing gross income from all sources for the year ending Dec. 31, 1920, upon which is computed the three per centum tax as an annual license fee for the privilege of transacting business in the State of Wisconsin for the year ending March 1, 1922, required under chapter 434, Laws of Wisconsin, 1915, Sec. 51.32

Gross Income

Interest on mortgage loans	\$10,450,336 27
Interest on bonds	5,282,018 70*
Interest on premium notes, policy loans or liens, less \$336.00 or interest received on bonds deposited with the Company under the Soldiers' & Sailors' Civil Relief Act exempt from taxation	3,426,860 40
Interest on deposits in banks	205,741 16
Interest collected on registration of lapsed policies	7,101 13
Interest collected on agent's indebtedness	678 17
Total Income	\$19,372,735 83
Three per centum thereon	\$581,182 07†

* Interest received on obligations of the United States of America, exempt from taxation in accordance with the provisions of the acts authorizing the issue thereof, not included:

First Liberty Loan 3½'s	\$26,250 00
Second " " 4½'s (Converted 4's)	131,548 96
Third " " 4½'s	740,751 20
Fourth " " 4½'s	428,129 29
Victory " " 4½'s	447,647 91
U. S. A. Treasury Certificates of Indebted- ness	226,092 82
United States of America 4's of 1925	4,000 00
	<hr/> \$2,004,420 18

Milwaukee, Wisconsin, February 28, 1921.

†Reassessed \$1,369.12, 3% on the following:

Profit on sale of real estate	\$1,500 00
Discount accrued on bonds	261,061 25

\$262,561 25

Less:

Amortization of premiums on bonds	\$87,294 42
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Loss on sale of bonds	129,629 34
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216,923 76

\$45,637 49 at 3% \$1,369 12

[fol. 42] EXHIBIT D TO BILL OF COMPLAINT

(Copy)

The Northwestern Mutual Life Insurance Company,
Milwaukee, Wisconsin

Statement showing gross income from all sources for the year ending Dec. 31, 1921, upon which is computed the three per centum tax as an annual license fee for the privilege of transacting business in the State of Wisconsin for the year ending March 1, 1923, required under Wisconsin Statutes, 1921, Section 76.34.

Gross Income

Interest on mortgage loans	\$11,575,945 26
Interest on bonds	5,443,987 41
Interest on premium notes, policy loans or liens, less \$59,500, interest received on bonds deposited with the Company under the Soldiers' & Sailors' Civil Re- lief Act, exempt from taxation	3,830,867 72
Interest on deposits in banks	220,796 17

Interest collected on restoration of lapsed policies	7,710 13
Interest collected on agent's indebtedness	60 92
Interest included in judgment secured to recover taxes	55,967 36
Profit on sale of Real Estate	6,817 74
Profit on sale of Bonds \$17,481.55, less loss on sale of bonds \$17,062.95	418 60
Discount accrued on bonds \$329,044 94, less \$68,036.03 for amortization of premiums	261,008 91
Total Income	\$21,403,580 22
Three per centum thereon	\$642,107 41

* Interest received on obligations of the United States of America, exempt from taxation in accordance with the provisions of the acts authorizing the issue thereof, not included:

First Liberty Loan 3½'s	\$26,250 00
Second " " 4½'s	171,275 00
Third " " 4½'s	871,250 00
Fourth " " 4½'s	499,375 00
Victory " " 4½'s	447,891 96
U. S. A. Treasury Certificates of Indebtedness	86,329 33
United States of America—4's of 1925	1,933 33
	\$2,104,304 62

Note.—Income Item #39—"Conscience money \$700.00"—not included in "Gross Income"—represents amount received from an unknown beneficiary and stated to be a reimbursement for an understatement of age in connection with death claim paid; date of death and all other particulars unknown.

Milwaukee, Wisconsin, February 27, 1922.

[fol. 43] EXHIBIT E TO BILL OF COMPLAINT

(Copy)

The Northwestern Mutual Life Insurance Company,
Milwaukee, Wisconsin

Statement showing gross income from all sources for the year ending Dec. 31, 1922, upon which is computed the three per centum tax as an annual license fee for the privilege of transacting business in the State of Wisconsin for the year ending March 1, 1924, required under chapter 434, Laws of Wisconsin, 1915, Section 76.34

Gross Income

Interest on mortgage loans	\$12,801,365.53
Interest on bonds	6,782,714.37*
Interest on premium notes, policy loans or liens, less \$29.75, interest received on bonds deposited with the Company under the Soldiers' & Sailors' Civil Relief Act, exempt from taxation	4,529,831.72
Interest on deposits in banks	185,564.72
Interest collected on restoration of policies	11,777.91
Interest collected on agent's indebtedness	196.20
Interest on judgment secured in policy claim suit	12.81
Profit on sale of bonds \$112,745.64, less loss on sale of bonds \$27,814.92	84,931.62
Discount accrued on bonds \$315,228.62, less \$88,269.65 for amortization of premiums	226,958.97
Total Income	\$24,623,323.55
Three per centum thereon	\$738,699.71

* Interest received on obligations of the United States of America, exempt from taxation in accordance with the provisions of the acts authorizing the issue thereof, not included:

First Liberty Loan 3½'s	\$7,583 33
Second " " 4½'s	191,285 37
Third " " 4½'s	847,898 60
Fourth " " 4½'s	499,375 00
Victory " " 4½'s	17,945 91
U. S. A. Treasury Notes	66,183 95
U. S. A. Treasury Certificates of Indebtedness	113,083 93
Paid for accrued on U. S. A. Treasury Bonds	175 14
	<hr/>
	\$1,743,180 95

Milwaukee, Wisconsin, February 27, 1923.

[fol. 44] EXHIBIT F TO BILL OF COMPLAINT

The State of Wisconsin, Department of Insurance, Madison
W. Stanley Smith, Commissioner, Olaf H. Johnson, Deputy.

October 24, 1923.

Northwestern Mut. Life Insurance Co., Milwaukee, Wisconsin.

GENTLEMEN: In accordance with the opinion of the Attorney General, dated October 19, 1923, a copy of which is herewith enclosed, demand is hereby made for additional 1918, 1919, 1920, 1921 and 1922 annual license fees amounting to \$208,468.80, together with interest to date computed as follows:

Year	Deductions	3% license fee	Interest
1918	\$177,720 52	\$5,331 62	\$1,488 42
1919	919,334 11	27,580 02	6,944 71
1920	2,004,420 18	60,132 61	9,571 31
1921	2,104,304 62	63,129 12	6,260 51
1922	1,743,180 95	52,295 43	2,048 41
	<hr/>	<hr/>	<hr/>
	\$6,948,960 38	\$208,468 80	\$25,413 36
			208,468 80
			<hr/>
Total			\$233,882 16

Kindly draw check payable to "Commissioner of Insurance" for the amount of \$233,882.16.

(Signed) Yours very truly, W. Stanley Smith. W.
Stanley Smith, Commissioner of Insurance.

Encl.

JRL:EA.

[Vol. 45] EXHIBIT G TO BILL OF COMPLAINT

(Copy)

The State of Wisconsin, Department of Insurance, Madison
W. Stanley Smith, Commissioner. Olaf H. Johnson, Deputy

January 3, 1924.

Mr. George Lines, General Counsel the Northwestern Mutual Life Insurance Company, Milwaukee, Wisconsin.

DEAR SIR: This is to acknowledge receipt of your letter of January 2nd regarding the unpaid license fee.

Under the provisions of section 201.41 (formerly section 1917) Wisconsin Statutes, I do not see why I should not revoke the company's license. It is clear that the licenses for the years in question were issued in error and contrary to the provisions of section 76.37, Wisconsin Statutes.

I cannot agree that this question should be subordinated to other matters which require your attention. This is an important matter and impressed with a public interest.

Being charged with the administration of the insurance law, it is my statutory duty to revoke the license and my course admits of no alternative. However, I dislike to put into operation the mechanics of revoking the license of our largest domestic institution. This will necessitate the notification to all agents, as well as to all state insurance departments in which the company is licensed.

I feel that you have been given sufficient time to consider this matter, which was brought to your attention on October 24, 1923. Because of the urgency of the matter, it should be brought to the point of finality forthwith.

(Signed) Yours very truly, W. Stanley Smith. W.

Stanley Smith, Commissioner of Insurance.

WSS:c.

[fol. 46] EXHIBIT II TO BILL OF COMPLAINT

(Copy)

To the Hon. W. Stanley Smith, Commissioner of Insurance,
and the Hon. Solomon Levitan, State Treasurer of Wisconsin,
Madison, Wisconsin.

GENTLEMEN: You and each of you are hereby notified that The Northwestern Mutual Life Insurance Company of Milwaukee, Wisconsin, a corporation duly organized under the laws of said State, does hereby, on the order of said Commissioner of Insurance, involuntarily and under protest, pay to you, the said State Treasurer for the State of Wisconsin, the sum of Two hundred thirty six thousand five hundred fifteen and 14/100 Dollars (\$236,516.14), being the amount claimed by said Commissioner of Insurance to be due the State of Wisconsin from said Company as additional license fees or taxes for the years 1918, 1919, 1920, 1921 and 1922.

Said payment and the whole thereof is made involuntarily, under duress, under protest, under coercion and compulsion, to prevent said Commissioner of Insurance from revoking the license of said Company as threatened in his letter of January 3, 1924, a copy of which is hereto attached, marked Exhibit "A" and made a part hereof.

Said additional license fees or taxes so demanded and paid are three per cent of the gross interest received by said Company from bonds owned by it and issued by the United States, which interest was excluded by said Company in its statements of gross income for said years, plus interest on said several sums from March first each year, as follows:

Year	Gross Interest	3% Tax	Interest to Jan. 10, 1924
1918	\$177,720 53	\$5,331 62	\$1,555 77
1919	919,334 11	27,590 02	6,393 05
1920	2,004,420 18	60,132 61	10,330 78
1921	2,104,304 62	63,129 12	7,057 84
1922	1,743,180 95	52,295 43	2,708 90
	\$6,948,960 38	\$208,468 80	\$28,046 34
			208,468 80
			\$236,515 14

[fol. 47] All of said bonds were issued by the United States pursuant to the Acts of Congress stated below, passed under authority of the Constitution of the United States, providing: "The Congress shall have power * * * to borrow money on the credit of the United States." (Art. I, Sec. 8, United States Constitution.)

The bonds commonly known as the United States 4s of 1925 were issued under the authority of the Act of Congress approved January 4, 1875, (18 U. S. Stats. at Large, p. 296), and the Act approved July 14, 1870, (16 U. S. Stats. at Large, p. 272), which Acts provided that "all of * * * said * * * bonds and the interest thereon shall be exempt from the payment of all taxes or duties of the United States as well as from taxation in any form by or under state, municipal or local authority; and the said bonds shall have set forth and expressed upon the face the above specified conditions." So-called Liberty Loan and Victory Bonds and United States Treasury Certificates and Treasury Notes were issued under authority of the Act of Congress approved April 24, 1917, (U. S. Stats. 1917, p. 35; Chap. 4—65th Congress, First Session), which provides that "the principal and interest thereof shall be payable in United States gold coin of the present standard of value, and shall be exempt both as to principal and interest from all taxation except estate or inheritance taxes imposed by authority of the United States or its possessions, or by any state or local taxing authority," and by authority of the Act of Congress approved September 24, 1917, (U. S. Stats., p. 288—1917; Chap. 56—65th Congress, First Session), which provides that: "All such bonds and certificates shall be exempt both as to principal and interest, from all taxation now or hereafter imposed by the United States, any state, or any of the possessions of the United States, or by any local taxing authority, except (a) estate or inheritance taxes, and (b) graduated additional income taxes, commonly known as surtaxes, and excess profits and war profits taxes, now or hereafter imposed by the United States upon the income or profits of individuals, partnerships, associations, or corporations."

Said payment is made with protest against the validity of such fees or taxes, and each and every part of the same, and against the right of you or either of you or of the State [fol. 48] of Wisconsin to collect or receive the amount so paid, or any part thereof, for the reason that all the interest received by said Company from said bonds was and is exempt from taxation in any form by the State of Wisconsin, and the inclusion of the gross amount of interest received from said bonds as part of the gross income of said Company subject to tax for the years aforesaid is illegal and void, being in fact a tax and burden upon the securities of the United States declared by the Acts of Congress to be exempt from taxation for any purpose whatever.

And you and each of you are hereby informed that said Company claims hereby that collection of the taxes or fees protested as aforesaid is illegally exacted by you and each of you, and you are hereby notified that unless repaid said Company at the proper time and in the proper manner will institute suit or take such other appropriate legal proceedings for the recovery of the fees or taxes so paid under protest as aforesaid as it may be advised, and it hereby makes demand of you and each of you for the repayment of the taxes or fees so paid under protest.

Dated at Milwaukee, Wisconsin, this 10th day of January, 1924. Executed in triplicate.

The Northwestern Mutual Life Insurance Company,
by W. D. Van Dyke, President.

(Copy of Exhibit "A" is omitted because a copy thereof, marked Exhibit G, is already attached to the complaint.)

[fol. 49]

EXHIBIT I TO BILL OF COMPLAINT

(Copy)

The Northwestern Mutual Life Insurance Co. to Hon. Solomon Levitan, State Treasurer, Madison, Wisconsin

1924
Jan. 9 Additional License Taxes and interest thereon as follows:

		Amount
For 1918, Additional Tax	\$5,331.02	
Int. thereon to Jan. 10, 1924		\$1,555.77
For 1919, Additional Tax	27,580.02	
Int. thereon to Jan. 10, 1924		6,323.05
For 1920, Additional Tax	66,132.61	
Int. thereon to Jan. 10, 1924		10,330.78
For 1921, Additional Tax	66,129.12	
Int. thereon to Jan. 10, 1924		7,637.84
For 1922, Additional Tax	52,295.43	
Int. thereon to Jan. 10, 1924		2,708.90
Total Addl. Tax	\$208,468.80	
Total interest thereon		\$28,040.34
Total Additional Tax and interest		\$236,509.14

All the above payments made under written protest.

Approved, Jan. 9, 1924.

Geo. Lines, General Counsel. W. D. Van Dyke,
President. E. D. Jones, Secretary.

Audited Jan. 9, 1924, at \$236,515.14.

S. E. Barry, Auditor.

Received of the Northwestern Mutual Life Insurance Co. two hundred thirty six thousand five hundred fifteen and 14/100 dollars, in full payment of the above account.

Solomon Levitan, State Treasurer.

Dated January 10, 1924.

[fol. 50] Received copy of the within complaint this 15th day of February, 1924.

Herman L. Ekern, Atty. Gen., Attys. for Defendant.

[fol. 51] IN CIRCUIT COURT OF DANE COUNTY

[Title omitted]

DEMURRER—Filed in Circuit Court February 16, 1925, in
Supreme Court July 16, 1925

Comes now the above named defendant, by its attorneys,
Herman L. Ekern, Attorney General, and R. M. Rieser,
Deputy Attorney General, and demurs to the complaint of
the plaintiff herein, on the ground and for the reason that
the complaint in said action does not state facts sufficient
to constitute a cause of action.

Wherefore defendant demands that said action be dis-
missed and that plaintiff take nothing thereby, and that
the defendant do have and recover its costs and disburse-
ments herein.

Herman L. Ekern, Attorney General; R. M. Rieser,
Deputy Attorney General, Attorneys for the De-
fendant.

[File endorsement omitted.]

[fol. 52] Due and personal service of the within demurrer
admitted this 6th day of March, 1924.

George Lines and Sam T. Swansen, Attorney for
Plaintiff.

[fol. 53] IN CIRCUIT COURT OF DANE COUNTY

[Title omitted]

ORDER SUSTAINING DEMURRER—Filed in Circuit Court June
2, 1925; in Supreme Court July 16, 1925

This action having been brought to trial on the issue of
law raised by the demurrer of the defendant to the com-
plaint herein, and after considering the briefs and argu-
ments of counsel,

It is ordered that said demurrer be sustained and that
the defendant have judgment thereon but with leave to the
plaintiff to amend the complaint within twenty days from

May 16, 1925, being the date of the direction for the order sustaining said demurrer.

By the Court,

E. Ray Stevens, Circuit Judge.

[File endorsement omitted.]

[fol. 54] Due and personal service of the within order sustaining demurrer admitted this 28th day of May, 1925.

George Lines and Sam T. Swansen, Attorney for Plaintiff.

[fols. 55 & 56] IN CIRCUIT COURT OF DANE COUNTY

[Title omitted]

JUDGMENT—Filed in Circuit Court June 17, 1925; in Supreme Court July 16, 1925.

An order having been entered in this action and served upon the plaintiff, sustaining the demurrer to the complaint herein and giving the said plaintiff leave to amend its complaint within twenty days from the sixteenth day of May, 1925, and the plaintiff not having served any amended complaint within said time, and more than twenty days having elapsed since the sixteenth day of May, 1925,

Now, on motion of Herman L. Ekern, Attorney General, and C. A. Erikson, Deputy Attorney General, attorneys for defendant,

It is ordered and adjudged that the complaint herein be, and the same is hereby dismissed on its merits, and that defendant have and recover its costs of said plaintiff taxed at \$13.28.

By the Court,

Herbert F. Hansen, Clerk.

June 17, 1925.

[File endorsement omitted.]

[fol. 57] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 58] Minute entry of argument and submission December 10, 1925, omitted in printing.

[fols. 59 & 60] IN SUPREME COURT OF WISCONSIN

(Case No. 1)

NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY,
Appellant,

vs

STATE OF WISCONSIN, Respondent

Dane Circuit Court

JUDGMENT—February 9, 1926

This cause came on to be heard on appeal from the judgment of the Circuit Court of Dane County, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the Circuit Court of Dane County, in this cause, be and the same is hereby affirmed, with costs against the said appellant, taxed at the sum of Fifty and 25/100 Dollars (\$50.25).

Justice Stevens took no part.

[fol. 61] IN SUPREME COURT OF WISCONSIN

[Title omitted]

Appeal from a Judgment of the Circuit Court for Dane
County

E. Ray Stevens, Circuit Judge

OPINION

This is an action brought under section 76.37, Wis. stats. 1923, to recover \$236,515.14 with interest, being the amount of taxes paid under protest by the plaintiff on January 10, 1924. The complaint was demurred to on the ground that it

did not state facts sufficient to constitute a cause of action. The demurrer was overruled with leave to amend. The plaintiff stood upon its complaint and thereupon judgment of dismissal was entered, from which the plaintiff appeals.

[fol. 62] ROSENBERY, J.:

The tax was imposed under the provisions of section 76.34, Wis. stats. 1923:

"Life Insurance Companies to Pay Annual License.—Every company, corporation or association transacting the business of life insurance within this state, excepting only such fraternal societies as have lodge organizations and insure the lives of their own members, and no others, shall, on or before the first day of March, in each year, pay into the state treasury as an annual license fee for transacting such business the amounts following:

(1) Domestic Companies: Three per Cent of Gross Income.—If such company, corporation or association is organized under the laws of this state, three per centum of its gross income from all sources for the year ending December thirty first, next prior to said first day of March excepting therefrom income from rents of real estate upon which said company, corporation or association has paid the taxes assessed thereon, and excepting also premiums collected on policies of insurance and contracts for annuities.

(2) Foreign Companies.—* * *

(3) Power Granted by License: License Fee in Lieu of Other Taxes.—Such license, when granted shall authorize the company, corporation or association to whom it is issued to transact business until the first day of March of the ensuing year, unless sooner revoked or forfeited. The payment of such license fee shall be in lieu of all taxes for any purpose authorized by the laws of this state, except taxes on such real estate as may be owned by such company, corporation or association.

In reporting its taxable income under the provisions of this law, the plaintiff withheld therefrom sums derived from interest on United States bonds. Although the amount of interest received from such sources was dis-

closed, it was not included in the taxable income on the theory that the income derived from securities issued by the United States was entirely free from tax. The state apparently concurred in this view for a time but in October, 1923, the commissioner of insurance made written demand upon the plaintiff to pay forthwith into the state treasury additional taxes or license fees for the license years 1919 to 1923, inclusive, equal to three per cent. of gross interest received during the years 1918 to 1922, inclusive, from the federal tax free bonds described in the complaint, with interest at six per cent. from March first of the year when the tax or fee should have been paid according to the demand. [fol. 63] In January, 1924, the commissioner repeated said demand and threatened that unless paid he would cancel and revoke plaintiff's license to transact business in the state. In order to protect its rights to do business, plaintiff was in this way compelled to pay and did pay under protest on January 10, 1924, as additional taxes or license fees for each of said license years three per cent. of the gross amount of interest received by it upon the bonds described in the complaint, amounting to \$208,468.80, with interest amounting to \$28,046.34; total, \$236,515.14. This sum was immediately deposited in the state treasury and the treasurer issued and delivered his official receipt therefor.

It is the contention of the plaintiff that the laws of the United States exempt all United States securities described in the complaint from taxation by or under state authority and that liberty and victory loan bonds were expressly exempt,

"both as to principal and interest, now or hereafter imposed by the United States, any state, or any of the possessions of the United States, or by any local taxing authority except (a) estate or inheritance taxes, (b) graduated additional income taxes, commonly known as surtaxes, and excess profits and war profits taxes, now or hereafter imposed by the United States upon the income or profits of individuals, partnerships, associations, or corporations." (U. S. Stats. 1917, p. 288.)

It is further contended that this act of compulsion asserted by the commissioner under the provisions of section

76-34 was unlawful and did great damage to the plaintiff and operated to impose a direct burden upon and interference with the right of Congress to borrow money upon the credit of the United States as authorized by Art. I, sec. 8, (2) and (18), of the United States constitution; that it was also in violation of the laws of the United States wherein and whereby it was provided that the bonds described should [fol. 64] be exempt from the tax so imposed and collected. It is also contended that the act of the commissioner deprived the plaintiff of property without due process of law and denied to it equal protection of the laws contrary to the fourteenth amendment of the constitution of the United States. The complaint contained a prayer for the recovery of the amount paid under protest with interest from January 10, 1924, with costs.

The trial court held that the payment which the plaintiff was required to make by virtue of the provisions of section 76-34 is a privilege or occupation tax and is an annual license fee paid by the company for the privilege of transacting its business in Wisconsin, *Northwestern Mut. L. Ins. Co. v. State*, 163 Wis. 484; that no tax is levied upon securities exempt from taxation; that the income of the plaintiff from its investments is used only as a measure of the value of the property and franchise lawfully taxable in the state, *Northwestern Life Ins. Co. v. Wisconsin*, 247 U. S. 132; and further held that a license fee or tax paid for the privilege of doing business is not a tax upon the property; that the law imposes no burden upon tax exempt securities but simply uses the income from these securities as a means of measuring the amount of the license fee or privilege tax which plaintiff should pay for the privilege of conducting its business as a life insurance company, citing *Flint v. Stone Tracy Co.*, 220 U. S. 107.

The trial court was further of the opinion that the fact that the fee exacted from the plaintiff was in lieu of all other state taxes except taxes upon real estate did not change the nature of the contribution which the plaintiff [fol. 65] was required to make to the state.

It is contended on behalf of the state that the language of the act is so clear and explicit that it admits of no construction. It must be presumed that the legislature in

tended to act within the field of its lawful powers. If it had power to include income from federal tax exempt securities as part of the base upon which the tax should be reckoned, it should be held that it did so; on the other hand if it had no such power we should hold that it did not do so.

"Indeed where two governments like those of the United States and the Commonwealth, exercise their authority within the same territory and over the same citizens, the legislation of that which, as to certain subjects, is subordinate should be construed with reference to the powers and authority of the superior government and not be deemed as invading them, unless such construction is absolutely demanded. It should be held that such legislation was intended to apply so far as it was within its sphere, and such construction should be given to it." *Commonwealth v. Gagne* (Mass.), 10 L. R. A. 442. See also *Neff v. Industrial Comm.*, 160 Wis. 126; *Machine v. Fellenz Coal & Dock Co.*, 183 Wis., 44; *Ratterman v. Western Union Tel. Co.*, 127 U. S. 411.

The first question for consideration therefore is, does the statute as construed by the decision of this court and by the decision of the United States Supreme Court above referred to when applied to gross income of the plaintiff, including the income derived by it from its tax-exempt federal securities, tax or burden an instrumentality of the United States government, which it is beyond the power of the state to impose? *McCullough v. Maryland*, 4 Wheaton 316.

In *Northwestern Mut. L. Ins. Co. v. Wis.*, 247 U. S. 132, it was held:

"The construction of the act by the state court brings the case within the decisions of this court in *United States Exp. Co. v. Minnesota*, 223 U. S. 335; *Cudahy Packing Co. v. Minnesota*, 246 U. S. 450. In the former case a commutation tax upon gross receipts of the express company from state and interstate business was sustained as casting no burden [fol. 66] upon interstate commerce. In the *Cudahy Packing Co.* case a tax of like character was held not a burden upon interstate commerce, although much of the gross re-

ceipts, which measured the property tax, was derived from such commerce. In both of these cases, following the previous decisions of this court, the tax was held to be within the authority of the state, and the inclusion in the measure of taxation of the receipts partly derived from interstate commerce was held not to invalidate the tax, its amount not being in excess of what would be legitimate as an ordinary tax on the property taken at its value.

"We have said thus much as to the alleged invalidity of this license tax as a burden upon interstate commerce, without deciding, as we do not find it necessary to decide, whether the so called foreign investment business of the company does or does not, of itself, amount to interstate commerce. *If it amounts to commerce of that character no burden is cast upon it by such tax as is here involved, since the gross receipts coming from that character of business are used only as a measure of the value of the property and franchise lawfully taxable in the state.*" (Italics ours.)

While there is an analogy between a tax which imposes a burden upon interstate commerce and a tax which taxes or imposes a burden upon instrumentalities of the federal government, there is a distinction which was pointed out in *Gillespie v. Oklahoma*, 257 U. S. 501. It was there said in effect that where two sovereignties are operating in the same field as in the regulation of commerce, there is of necessity a certain amount of interference which cannot by any possibility be avoided if the states are to exist and to make laws whereas "the rule as to instrumentalities of the United States on the other hand is absolute in form and at least stricter in substance." With this rule in mind we proceed to a consideration of whether or not the statute imposes a burden upon the instrumentalities of the United States government or in any way impairs or impedes its power to issue securities exempt from taxation.

We had for many years in the State of Wisconsin a law imposing upon railway and other public utilities companies a license fee based upon gross earnings including earnings in interstate commerce. (See *State v. Railway Cos.* 128 Wis. 449.) While the validity of this statute was never con-[fol. 67] tested in the courts of the United States similar statutes were under consideration in a case known as *State*

Tax on Railway Gross Receipts, 15 Wallace 284. It was there said:

"It is not to be questioned that the states may tax the franchises of companies created by them, and that the tax may be proportioned either to the value of a franchise granted, or to the extent of its exercise; nor is it deniable that gross receipts may be a measure of proximate value, or, if not, at least of the extent of enjoyment. If the tax be, in fact, laid upon the companies, adopting such a measure imposes no greater burden upon any freight or business from which the receipts come than would an equal tax laid upon a direct valuation of the franchise. In both cases, the necessity of higher charges to meet the exaction is the same."

We see no difference between the law basing license fee of railway companies upon gross earnings, including earnings in interstate commerce and the statute under consideration where a similar license fee is measured by gross receipts including those derived from tax-exempt federal securities.

The United States Supreme Court having held in *Northwestern Mut. L. Ins. Co. v. Wisconsin*, supra, that this tax is within the rule laid down in *U. S. Express Co. v. Minnesota*, 223 U. S. 335, it becomes material for us to inquire as to the nature of the tax sustained in that case. The court said, speaking of the tax levied by the state of Minnesota:

"The tax in the present case is not like those held invalid in the *Galveston Case* and the *Oklahoma Case*, being in addition to other state taxation reaching the property of all kinds of the express company. The tax to be collected in part from the earnings of interstate commerce was part of a scheme of taxation seeking to reach the value of the property of such companies in the state, measured by the receipts from business done within the state. The statute was not aimed exclusively at the avails of interstate commerce (*Philadelphia & S. Mail S. S. Co. v. Pennsylvania*, 122 U. S. 326), but, as in the *Maine Case* (142 U. S. 217) was an attempt to measure the amount of tax within the admitted power of the state by income

derived, in part, from the conduct of interstate commerce. * * *

"Upon the whole, we think the statute falls within that class where there has been an exercise in good faith of a legitimate taxing power, the measure of which taxation is in part the proceeds of interstate commerce, which could not, in itself, be taxed, and does not fall within that class of statutes uniformly condemned in this court, which show a manifest attempt to burden the conduct of interstate commerce, such power, of course, being beyond the authority of the state."

[fol. 68] While the Supreme Court of the United States was there speaking of a burden cast upon interstate commerce, we see no reason why the reasoning of the court in that case does not apply in the instant case. But in a previous case where the situation was reversed and the court had under consideration the power to measure a tax levied by the United States government by the amount of income derived from tax exempt securities issued by states and municipalities, the court said:

"Nor does the adoption of this measure of the amount of the tax do violence to the rule laid down in *Galveston, H. & S. A. R. Co. v. Texas*, 210 U. S. 217, nor the *Western U. Telegraph Co. v. Kansas*, 216 U. S. 1. * * *

"There is nothing in these cases contrary, as we shall have occasion to see, to the former rulings of this court which hold that where a tax is lawfully imposed upon the exercise of privileges within the taxing power of the state or nation, the measure of such tax may be the income from the property of the corporation, although a part of such income is derived from property in itself nontaxable. The distinction lies between the attempt to tax property as such and to measure a legitimate tax upon the privileges involved in the use of such property.

"It is there well settled by the decisions of this court that when the sovereign authority has exercised the right to tax a legitimate subject of taxation as an exercise of a franchise or privilege, it is no objection that the measure of taxation is found in the income produced in part from property which of itself considered is nontaxable. Applying that doctrine to this case, the measure of taxation being

the income of the corporation from all sources, as that is but the measure of a privilege tax within the lawful authority of Congress to impose, it is no valid objection that this measure includes, in part, at least, property which, as such, could not be directly taxed." *Flint v. Stone Tracy Co.*, 220 U. S. 107, 163, 165.

It having been held that the amount paid by the plaintiff in this case is a tax lawfully imposed upon the exercise of privileges within the taxing power of the State of Wisconsin, the plaintiff being a Wisconsin corporation and it having been held that such a tax being in lieu of all other taxes may properly be measured by gross income although such income includes income derived from tax exempt securities, it must be held that the tax was lawfully imposed [fol. 69]. Such was the conclusion reached by the Court of Appeals of the District of Columbia in *Security Savings & Commercial Bank v. District of Columbia*, 279 Fed. 185. The plaintiff and appellant in that case was a savings bank, incorporated under the laws of West Virginia, doing business in the District of Columbia. Pursuant to an act of July 1, 1902, as amended, a tax was levied upon the gross earnings of the bank. These earnings included \$165,17.33, interest derived from liberty bonds, victory bonds, war savings stamps, and certificates of indebtedness of the United States, which were by law exempt from taxation. The tax on the earnings derived from these securities was paid under protest, and the bank, claiming the tax was void, instituted an action for its recovery. The court held the tax in question valid. See also *In re Detroit & Windsor Ferry Co.* (Mich.), 205 N. W. 102.

The legislature having made the gross income of the plaintiff the base upon which the amount of the fee or tax should be reckoned and it having been held that such a statute imposes no tax or burden upon tax exempt instrumentalities of the federal government, it was within the power of the legislature. The act should be construed as applying to the gross income of the plaintiff, including that derived from tax exempt federal securities. We should construe it otherwise if it were held that the inclusion of income from tax exempt securities was beyond the lawful power of the legislature.

It is argued on behalf of plaintiff that in order to sustain the law, the court must ignore the difference between a tax levied upon gross receipts and net earnings, a distinction which was pointed out in *U. S. Glue Co. v. Oak Creek*, 247 U. S. 321. See also *Alpha Portland Cement Co. v. Commonwealth*, 45 Supreme Court Rep. 477. We have carefully considered and weighed the argument of plaintiff's counsel [fol. 70] and recognize the force of the contention. The answer thereto is furnished by the Supreme Court of the United States in *Flint v. Stone Tracy Co.* supra, where it held that a tax such as the one imposed by the statute in this case does no violence to the rule laid down in such cases as *Galveston H. & S. A. R. Co. v. Texas*, 210 U. S. 217, which case also dealt with a tax levied on gross receipts. The United States Supreme Court having drawn the distinction, it is our duty to follow it.

We shall not attempt to reconcile all the conflicting dicta to be found in the decisions upon this vexed question. The statute in question having been classified by the Supreme Court of the United States in the prior decision of *Northwestern Mut. L. Ins. Co. v. Wisconsin*, supra, as one which lawfully imposes a license or privilege tax, the amount of which is measured by the amount of the gross income, it falls clearly within the reasoning of *Flint v. Stone Tracy Co.*, 220 U. S. 107. Unless these decisions are modified or overruled, we see no escape from the conclusion that the tax in question is valid.

By the Court: Judgment affirmed.

[fol. 71] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 72] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed June 9, 1926.

Plaintiff in error intends to rely upon the following points of law:

1. A state law which operates to impair the credit of the United States is null and void.

2. The State of Wisconsin cannot by tax or other means impose a burden upon the United States or any of its agencies or instrumentalities employed in carrying out its sovereign powers.

3. The bonds and securities described in the complaint, being obligations issued by the United States, are government instrumentalities employed in carrying out the sovereign power to borrow money on the credit of the United States, under Article I, section 8, subd. 2, of the Constitution of the United States.

4. Section 76.34, Wisconsin Statutes 1921 (numbered sec. 1211.35 in Wis. Stats. for 1919, and sec. 51.32 in Wis. Stats. for 1917), imposes upon plaintiff in error a tax involving the exercise by the State of the power of taxation, and not the police power.

5. Section 76.34, Wisconsin Statutes 1921 (numbered sec. 1211.35 in Wis. Stats. for 1919, and sec. 51.32 in Wis. Stats. for 1917), which imposes upon plaintiff in error, a Wisconsin life insurance company, a tax of three per cent. of its gross income from all sources (except from premiums and real estate upon which plaintiff in error has paid a real estate tax), including, as construed by the Supreme Court of the State of Wisconsin, gross interest received from bonds and securities issued by the United States, and thereby compelling plaintiff in error to pay annually a large tax on account of gross interest received from such bonds and securities, imposes a direct burden upon such bonds and securities, and to that extent contravenes Article I, section 8, subd. 2, of the United States Constitution, and is null and void.

6. Section 76.34, Wisconsin Statutes 1921 (numbered sec. 1211.35 in Wis. Stats. for 1919, and sec. 51.32 in Wis. Stats. for 1917), which imposes upon plaintiff in error, a Wisconsin life insurance company, a tax of three per cent. of its gross income from all sources (except from premiums and real estate upon which plaintiff in error has paid a real estate tax), including, as construed by the Supreme Court of The State of Wisconsin, gross interest received from bonds

and securities issued by the United States, imposes a burden upon and interference with the power of Congress to borrow money upon the credit of the United States, impairs the credit of the United States, and as respects gross interest received from such bonds and securities, contravenes the provisions of Article I, section 8, subd. 2, of the Constitution of the United States.

7. A state revenue law, whatever its form, contravenes Article I, section 8, subd. 2, of the Constitution of the United States, and is null and void in so far as it reaches directly the bonds and securities issued by the United States in such a way that the value of such bonds and securities or the gross interest received from them increases directly the tax or sum exacted by the State under its taxing power.

8. Section 76.34, Wisconsin Statutes 1921 (numbered sec. 1211.35 in Wis. Stats. for 1919, and sec. 51.32 in Wis. Stats. for 1917), which imposes on plaintiff in error, a Wisconsin life insurance company, a tax of three per cent. of its gross income from all sources (except from premiums and real estate upon which plaintiff in error has paid a real estate tax), including, as construed by the Supreme Court of the State of Wisconsin, gross interest received from bonds and securities issued by the United States, reaches such bonds and securities directly in such a way that the gross interest received therefrom directly increases the tax levied by the State under its taxing power.

[fol. 74] 9. A state revenue law which taxes directly the gross receipts from or the business of interstate commerce, or the article carried in interstate commerce, or the gross capital employed therein, or requires a license to carry on interstate commerce, is a regulation of and a burden upon such a commerce, and void under Article I, section 8, subd. 3, of the United States Constitution.

10. To protect and make effective the sovereign power of the United States to borrow money on the credit of the United States, Congress may by law restrain and prevent a state from imposing any tax or burden upon the principal and interest of bonds and securities issued by the Federal Government.

11. Article I, section 8, subds. 2 and 18, and Article VI of the Federal Constitution, and the laws of Congress passed pursuant thereto, more particularly the laws exempting from all state taxation both principal and interest of bonds and securities issued by the United States—expressly and positively prohibit and prevent the State of Wisconsin from taxing or otherwise imposing any burden upon such bonds and securities, or the ownership thereof, or upon the interest received therefrom.

12. Plaintiff in error, as a citizen of the United States whose charter powers authorize it to purchase and own securities, may, by virtue of the Constitution of the United States and the laws of Congress passed pursuant thereto, without the consent or approval of the State of Wisconsin, legally purchase and own bonds and securities issued by the United States. The State of Wisconsin cannot take such right away or burden the exercise thereof, or require plaintiff in error to agree, as a condition of doing business in the state, that it pay a tax to the state of a specific percentage of its gross interest received from such bonds and securities.

13. The right of the State of Wisconsin to tax or otherwise impose a burden upon bonds and securities issued by the United States is a question of power, and not the amount of tax or extent of the burden imposed.

14. Section 76.34, Wisconsin Statutes 1921 (numbered sec. 1211.25 in Wis. Stats. for 1919, and sec. 51.32 in Wis. Stats. for 1917), which imposes upon plaintiff in error, a Wisconsin life insurance company, a tax of three per cent. of its gross income from all sources (except from premiums and real estate upon which plaintiff in error has paid a [16d. 75] real estate tax), including, as construed by the Supreme Court of the State of Wisconsin, gross interest received from bonds and securities issued by the United States, deprives plaintiff in error of its property without due process of law in so far as such gross income is received from such bonds and securities, and denies to it the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States.

Plaintiff in error designates the following parts of the record as necessary for the consideration of the points of law above stated:

	Page of record
1. Petition for writ of error	1
2. Order allowing writ	1
3. Writ of error	3, 4
4. Citation	5, 6
5. Assignment of errors	7-13
6. Certificate of lodgment	14-15
7. Copy of bond on writ of error	16, 17
8. Præcipe for record	18, 19
9. Summons	25
10. Complaint	27-30
11. Demurrer	31
12. Judgment of Circuit Court dismissing complaint with costs	35
13. Certificate of Clerk of Circuit Court and return to Supreme Court	37
14. Judgment, Wisconsin Supreme Court	59
15. Opinion, Wisconsin Supreme Court	60-70
16. Certificate of Clerk Wisconsin Supreme Court	71

Dated this 3rd day of June, 1926.

Geo. Lanes, Counsel for Plaintiff in Error.

[fol. 76] Due service of the above statement of points and designation of record to be printed admitted this 3rd day of June, 1926.

Herman P. Ekern, Attorney General, Counsel for
Defendant in Error.

[fol. 77] [File endorsement omitted.]

Endorsed on cover: File No. 31,988. Wisconsin Supreme Court, Term No. 421. Northwestern Mutual Life Insurance Company, plaintiff in error, vs. The State of Wisconsin. Filed June 2nd, 1926. File No. 31,988.